

November 19, 2004

Wenonah Hauter, Director  
Public Citizen's Critical Mass Energy  
and Environment Program  
Public Citizen  
215 Pennsylvania Avenue, SE  
Washington, D.C. 20003

Dear Ms. Hauter:

I am responding to your letter of August 18, 2004, addressed to Steven Stein in the Office of Nuclear Security and Incident Response and Ronald Frahm in the Office of Nuclear Reactor Regulation. In your letter you asked six questions about the NRC's recent determination to not make publicly available certain security information formerly included in the Reactor Oversight Process.

The NRC staff has carefully considered your questions and have provided responses to them. I have attached the staff's responses to this letter.

If you have any further questions on this matter, please contact Mr. Trip Rothschild in the NRC's Office of General Counsel at (301) 415-1611.

Sincerely,

/RA/

Glenn M. Tracy, Director  
Division of Nuclear Security  
Office of Nuclear Security  
and Incident Response

Attachment: As stated

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## Public Citizen Questions

1. *What act(s) or information prompted a review of the Reactor Oversight Process that led to this determination?*

The NRC's policies regarding protection of Reactor Oversight Process information are influenced by the threat environment in which we have operated since September 11, 2001. In hindsight, the NRC has come to recognize that much of the security-related information we routinely made publicly available in the past could reasonably aid those who seek to do us harm. Thus, consistent with our statutory responsibility to ensure adequate protection of public health and safety and to promote the common defense and security, the NRC revised its information dissemination policy.

2. *What authority does the NRC have to unilaterally determine what information does and does not pose a security threat and what is therefore suitable for public release? Are such decisions subject to appeal?*

As with all Federal agencies, authority to make determinations regarding an agency's records is vested in the agency by the Freedom of Information Act (FOIA). Determinations about what information may pose a security threat if made available to the public are based on recommendations of cognizant NRC staff, in consultation with other Federal agencies including the intelligence community. The determinations follow sound legal principles derived from the FOIA, as implemented by NRC regulations at 10 CFR Part 9, and instructed by policy guidance from the Department of Justice, which is vested by Congress with authority for establishing FOIA policy for the Federal Government. The Commission tries to balance the competing interests in each case: adequately protecting the public health and safety and promoting the common defense and security, while making available to the public the maximum amount of information that can be released consistent with these aims. In accordance with the procedures set forth in agency regulations at 10 CFR §9.29, such determinations are subject to appeal whenever they result from the denial of initial requests under the FOIA.

3. *What oversight mechanisms exist for reviewing NRC's security-related information decisions? Have they been followed?*

The Commission keeps its congressional oversight committees informed of the Commission's information disclosure policies. Judicial review of FOIA denials may be sought upon exhaustion of administrative remedies.

4. *Has the information no longer available been classified? If not, what designation has it been given that prevents its public release? Who made that determination?*

The information is not classified as National Security Information. It is a form of sensitive, unclassified, nonsafeguards information that is exempt from public disclosure under several FOIA exemptions.

Determinations of sensitive, unclassified information are made by staff trained in the agency's program for controlling such information. The program is described in Management Directive 12.6, "NRC Sensitive Unclassified Information Security Program." The determinations implementing the Commission's new policy are made by supervisors and managers of the Office of Nuclear Security and Incident Response and the Office of Nuclear Reactor Regulation.

5. *What specifically are NRC's plans to keep the public informed on the status of security at nuclear power plants?*

When the Commissioners directed the staff to withhold physical protection information from the general public, it also directed the staff to develop annual reports that summarized plant performance in physical protection. The reports will not contain any sensitive information and will be publicly available. As directed by the Commission the staff is planning to develop the first annual reports in early 2006. The NRC staff will also continue to hold periodic meetings on security issues with members of the public.

6. *Please clarify: when you state that certain security information will no longer be updated on the agency's website, does this mean previously posted material will remain available or that affected information will be removed? Is information that may have been removed still considered publicly available or has it been retroactively classified or otherwise designated not suitable for public dissemination?*

Information related to licensee performance that had been previously posted on the NRC's ROP Web site remains on the Web site. The current data is updated every calendar quarter and the previous quarter's information is relegated to the historical performance page. Therefore, 2004 first quarter data and data for all previous quarters are still available to the public on the NRC Web site. Under the new policy, the public Web site does not display the physical protection information for the second quarter of 2004, nor will it display the data for any subsequent quarter. The historical data have not been designated as needing controls from public access because the data had already been disseminated, and its age and corrective actions for identified deficiencies should reduce potential usefulness to possible adversaries.

The NRC has removed from its Web site certain inspection manual chapters and other generic inspection guidance. The NRC is now processing a FOIA request for those documents.